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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/688,843

10/17/2003

Sherwin Shang

DI-5855 US

9443

29200

7590

10/04/2007

BAXTER HEALTHCARE CORPORATION

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EXAMINER

PATTERSON, MARC A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

10/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/688,843

**Applicant(s)**

SHANG ET AL.

**Examiner**

Marc A. Patterson

**Art Unit**

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                           | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

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**DETAILED ACTION**

**NEW REJECTIONS**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 – 6 and 12 – 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Shang et al (U.S. Patent Publication No. 2002/0115795).

With regard to Claims 1 – 2 and 14, Shang et al disclose a monolayer film (paragraph 0068) comprising a blend of a first component of an ethylene polymer (paragraph 0073) and a propylene – containing polymer (paragraph 0076) each present in an amount of 50% by weight of the film (paragraph 0074); the ethylene polymer is a polymer ‘set forth above’ (paragraph 0073) which is ethylene – lower alkyl acrylate interpolymer (paragraph 0038); the film is capable of withstanding steam sterilization at 121 degrees Celsius (therefore terminal sterilization by exposure to steam at 121 degrees Celsius for one hour; paragraph 0004) and the first and second components having melting point temperatures determined by DSC, and the second melting point temperature is higher than the first melting point temperature (paragraph 0068); a portion of the first component is crosslinked and the second component is free of crosslinking (paragraph 0024) and the film is therefore partially crosslink free.

With regard to Claims 3 and 6, the ethylene containing polymer is obtained using a single site catalyst (paragraph 0042).

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With regard to Claim 4, the ethylene containing polymer is a copolymer (paragraph 0073).

With regard to Claim 5, the propylene containing polymer is a copolymer (paragraph 0076).

With regard to Claim 12, the film is prepared by extrusion (paragraph 0085); however, the claimed aspect of the film being prepared by extrusion is a method limitation, rather than a structural limitation, and is therefore given little patentable weight.

With regard to Claims 13 and 15, the blend disclosed by Shang et al has a composition which is identical to the claimed invention, as stated above, and is capable of being fabricated into a liquid filled container (medical fluid container; paragraph 0004); the claimed aspects of the container having sufficient impact strength to resist rupturing when dropped from 8 feet and being capable of being sterilized by exposure to radiation are therefore inherent to Shang et al.

With regard to Claim 16, the film is capable of forming a peel seal to form a multiple chambered container (dual chambered container; paragraph 0100).

With regard to Claim 17, the film is capable of forming a permanent seal (paragraph 0083), therefore to form a multiple chambered container.

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shang et al (U.S. Patent Publication No. 2002/0115795) in view of Hamilton et al (U.S. Patent No. 5,397,842).

Shang et al discloses a container comprising a propylene containing polymer as discussed above. With regard to Claims 7 – 8, Shang et al fail to disclose a propylene container comprising a high melt strength polymer.

Hamilton et al teach a container (column 3, line 68) comprising a propylene polymer that is a high melt strength polymer (Abstract) for the purpose of obtaining a container that is resistant to sag (column 1, lines 10 – 13). One of ordinary skill in the art would therefore have recognized the advantage of providing for the high melt strength polymer of Hamilton et al in Shang et al, which comprises a container, depending on the desired resistance to sag of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a propylene container comprising a high melt strength polymer in Shang et al in order to obtain a container that is resistant to sag as taught by Hamilton et al.

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5. Claims 9 – 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shang et al (U.S. Patent Publication No. 2002/0115795) in view of Cahill et al (U.S. Patent No. 6,346,308).

Shang et al disclose a polymer as discussed above. With regard to Claims 9 – 11, Shang et al fail to disclose a polymer comprising an oxygen scavenger comprising oxidizable polyether and polydiene.

Cahill et al teach a polymer comprising oxygen scavenger comprising oxidizable polyether or polydiene for the purpose of obtaining a polymer having an extended shelf life (polybutadiene; column 4, lines 18 – 36). One of ordinary skill in the art would therefore have recognized the advantage of providing for the oxygen scavenger of Cahill et al in Shang et al, which comprises a polymer, depending on the desired shelf life of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a polymer comprising an oxygen scavenger comprising oxidizable polyether and polydiene in Shang et al in order to obtain a polymer having an extended shelf life as taught by Cahill et al.

#### ANSWERS TO APPLICANT'S ARGUMENTS

5. Applicant's arguments regarding the 35 U.S.C. 102(b) rejection of Claims 1 – 6 and 12 – 17 as being anticipated by Shang et al (U.S. Patent Publication No. 2002/0115795), 35 U.S.C. 103(a) rejection of Claims 7 – 8 as being unpatentable over Shang et al (U.S. Patent Publication No. 2002/0115795) in view of Hamilton et al (U.S. Patent No. 5,397,842) and 35 U.S.C. 103(a) rejection of Claims 9 – 11 as being unpatentable over Shang et al (U.S. Patent Publication No.

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2002/0115795) in view of Cahill et al (U.S. Patent No. 6,346,308), of record in the previous Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 2 of the remarks dated July 13, 2007, that Shang et al fail to disclose a crosslink – free film.

However, as stated on page 2 of the previous Action, a crosslink – free film is disclosed by Shang et al.

Applicant also argues, on page 3, that Shang et al fail to disclose a first component and second component, each of which is 50% by weight of the blend.

However, as stated above, Shang et al disclose a first component and second component, each of which is 50% by weight of the blend.

Applicant also argues, on page 4, that Hamilton and Cahill et al fail to disclose a crosslink – free film.

However, as stated above, a crosslink – free film is disclosed by Shang et al.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497.

The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Marc Patterson 10/1/07*  
Marc A. Patterson, PhD.  
Primary Examiner  
Art Unit 1772